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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,442	09/19/2000	Stephen J. Brown	00-0920 / 7553.00055	5890
60683 7590 12/17/2008 HEALTH HERO NETWORK, INC. 2400 GENG ROAD, SUITE 200 PALO ALTO, CA 94303				
EXAMINER				
KOPPIKAR, VIVEK D				
ART UNIT		PAPER NUMBER		
3686				
MAIL DATE		DELIVERY MODE		
12/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: STEPHEN J. BROWN

Application No. 09/665,442
Technology Center 3686

Mailed: December 17, 2008

Before DELORES LOWE, *Review Team Paralegal*
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 22, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

APPEAL BRIEF, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Appeal Brief filed February 11, 2008 under the heading “Grounds of rejection to be reviewed on appeal” is unclear and/or is not consistent with the grounds of rejection of claims of record. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified.

A review of the last Office action, including any mailed Advisory Action(s) finds that claims 48-49 and 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto in view of US Patent Number 6,421,633 to Heinonen; whereas Appellant have either not indicated the grounds of rejection of these claims or has improperly listed these claims as claims 48, 49, 52-54, ~~58~~-62, 78-83, 85-90, 92-97, 99-104 and 106 are patentable under 35 U.S.C. § 103(a) over Fujimoto in view of Heinonen et al. U.S. Patent No. 6,421,633. Correction of the Grounds of rejection to be reviewed on appeal for all claims is required.

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated July 15, 2008. There is no indication on the record that the Examiner has considered the above Information Disclosure Statement. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above Information Disclosure Statement is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) to hold the Appeal Brief filed on February 11, 2008 defective;
- 2) notify Appellant to file a paper properly addressing the Grounds of rejection of all claims;
- 3) consider the Information Disclosure Statement filed July 15, 2008;
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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